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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-520

EARL W. TAYLOR, PRO. PER. PETITIONER,

VS.

R. H. MACY COMPANY, INC. RESPONDENT.

MOTION

AND REPLY BRIEF IN RESPONSE TO RESPONDENTS BRIEF OPPOSING THE GRANTING OF THE WRIT.

FOR PETITIONER:

EARL W. TAYLOR, PRO. PER.
207 Gough Street
San Francisco, Calif. 94102
Phone:(415) 863-8063

FOR RESPONDENT:

DON T. HIBNER, JR.
SHEPPARD, MULLIN, RICHTER & HAMPTON
458 SOUTH SPRING STREET (SUITE 600)
LOS ANGELES, CALIFORNIA, 90013

McENERNEY & JACOBS
500 SANSOME STREET, (SUITE 501)
SAN FRANCISCO, CALIFORNIA, 94111

PAGE "A"

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-520

TAYLOR Vs. MACYS

MOTION

PETITITIONER, EARL W. TAYLOR, IN PRO. PER., HEREBY HUMBLY AND RESPECTFULLY, PRAYS THAT HE MAY BE PERMITTED TO FILE-AND TO HAVE THE COURT CONSIDER HIS REPLY TO RESPONDENTS BRIEF, FILED IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI; PRIOR TO RULING UPON THE PETITION.

PETITIONERS REPLY TO RESPONDENTS BRIEF, OPPOSING THE GRANTING OF THE WRIT, IS ENCLOSED HEREWITH-TOGETHER WITH EXHIBITS THAT APPEAR TO BEAR UPON RESPONDENTS OPPOSING BRIEF.

RESPECTFULLY SUBMITTED

Earl W. Taylor, Pro. Per.

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EXHIBITS IN SUPPORT OF PETITIONERS REPLY TO RESPONDENTS OPPOSITION TO THE GRANTING OF THE WRIT.

Exhibit "A".....Page 16
Letter from the Federal Reserve Board, dated September 7, 1972, signed by Griffith L. Garwood. Chief, Truth in Lending Section.

This letter is presented to show to this Court, that:
"In regard to OPEN END CREDIT, the fact that the Annual Percentage rate Disclosures, required by the Truth in Lending Act and Regulation "Z", do not reflect the use of this method is shared by many others."

This refers to the previous balance method, permitted by the Act and "Z".

Exhibit "B".....,Page 17
Page 18

A Copy of the California Constitution, Article XX, Sub 22 (USURY) which appears to confer upon Petitioner a civil Right, which he is denied under the interpretation of the Previous BALANCE DOCTRINE of T. in L. as applied by Respondent--thereby denying to petitioner his Civil Right under Article V. of the United States Constitution--DUE PROCESS OF LAW. (MEANINGFUL DISCLOSURES OF COST OF CREDIT)

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EXHIBIT "C".....,,Page 19

A copy of TIME MAGAZINE, dated September 10, 1973, relating to "OUR USELESS USURY LAWS".

EXHIBIT "D".....Page 20
Page 21

A copy of Internal Revnue Ruling, Revised and numbered 73-315, following the amendment to the Internal Revenue Code by Congress in 1972, RELATING TO FINANCE CHARGES ASSESSED UNDER THE TRUTH IN LENDING ACT BEING DEDUCTIBLE FROM TAX RETURN AS INTEREST.

EXHIBIT "E".....Page 22

A copy of paragraph at the bottom of page 3, of an opinion # 383, dated January 14 1972, from the Legislative Counsel of the State of California, signed by Brian L. Walkup, deputy Legislative Counsel for George H. Murphy, Legislative Counsel--which privides in Part--that under the Unruh Act, if carges made upon a Revolving Charge accout are INTEREST, such charges violate the Section, Article XX, Sub 22, (USURY), under the State of California Constitution.

(If Finance charges are assessed at the rate of 1½% PER MONTH.)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

NO. 73-520

Earl W. Taylor, Pro. Per. Petitioner,

VS

R.H. MACY & COMPANY, INC. Respondent.

PETITIONERS RESPONSE TO RESPONDENTS BRIEF OPPOSING APPLICATION FOR THE GRANTING OF WRIT OF CERIORARI.

1.

RESPONDENTS INTRODUCTORY STATEMENT. Page one of Respondents Brief, sets forth two distinct statements, that are hereby challenged.

FIRST): Respondent states:

> "Petitioner fails to recognize the fact that BOTH the Act, and the REGULATION Z describe a NOMINAL RATE, nota true yield rate, when mandating the disclosures reflecting the activity in a revolving charge account cycle."
>
> This statement is not supported by the Regulation Z.
>
> Should not the Act, and Regulation Z, authorized by the Act, be considered as a whole? Should not full consideration be given to each?

The Regulations with which we are herewith concerned have been issued pursuant Section 105 of the Truth in Lending Act, (Sec. 1604, U.S.C. 15), which relate to the Disclosure of the Annual Percentage Rate upon Open End Credit, and the method of computing such Annual Percentage Rate, are set forth in 12 C. F. R. 226.5 (a) & (a) (1). and Sect. 226.5 (a) (1) (i).
Sections 226.7 of Z; Sections 226.7.(b) (6) of Z; and Section 226.7 (b) (8) of Z, control in the above matter. AND NOWHERE IN THESE SECTIONS IS THE WORD NOMINAL TO BE FOUND.

In the matter and manner of the computation of the Annual Percentage Rate, the Sections 226.5 a, of Z; the Section 226.5 (1) of "Z"; the Section 226.5 (a) (1) (i) of Z; these sections take over. NOWHERE IN THESE SECTIONS OR ANY OF THEM DOES THE WORD NOMINAL APPEAR.

TO SUCH EXTENT THE REGULATIONS, CITED ABOVE, DIFFER FROM THE SECTION 127 OF THE ACT, AND SUCH DIFFERENCE IS AUTHORIZED, SECTION 105 OF THE ACT (SECTION 1604 et seq. Title 15 U.S.C.)

AND IT SHOULD BE NOTICED BY THE COURT THAT THE REGULATION Z, SECTION 226.5 (b), et seq. DOES EMPLOY THE WORD NOMINAL BUT SUCH SEC. 226.5 (b), RELATES SOLELY TO CREDIT OTHER THAN OPEN END.

It is also herewith pointed out that no Section of the Truth in Lending Act, Nor of Regulation Z, authorize or mandate the disclosure of a NOMINAL FINACE CHARGE TO BE EMPLOYED TO SATISFY THE PROVISIONS OF Z Section 226.5 (a); Section 226.5 (a) (1); nor Section 226.5 (a) (1) (i); IN THE MATTER OR MANNER OF COMPUTATION AND DISCLOSURE OF THE ANNUAL PERCENTAGE RATE.

Under Art XX Sec 22, the Legislature has no power to delegate local option to counties and municipalities. Atty Gen's Letter to City Prosecuting Attorney, Long Beach, Nov. 24, 1933, L.B. 129, p 119a.

There is no precise, lasting and inflexible definition of a municipal affair; and, while the licensing of a liquor business was a municipal affair prior to Sec 22 of Art XX, the adoption of said amendment changed the power to impose a license tax for revenue upon those engaged in the liquor business from a municipal affair to one of general state-wide concern and, therefore, removed such power from the protection of Sec 6 of Art XI. L. A. Brewing Co. v. Los Angeles (1935) 8 CA2d 391, 48 P2d 71.

Art XX, Sec 22, reserving to the State the exclusive power to license and regulate the manufacture, sale, etc., of intoxicating liquor within the State, being special in nature and adopted subsequent to Art XI, Sec 6, permitting chartered municipalities to reserve to themselves control of their municipal affairs subject only to express prohibition or limitation, controls in the express field that it covers, but its effect on the plenary power of taxation possessed by a chartered municipality should not be extended beyond the express terms of the constitutional reservation on the [illegible] of intoxicating liquors. Ainsworth v. Bryant (1949) 34 C2d 465, 211 P2d 561.

An ordinance of the City and County of San Francisco imposing a revenue tax of one-half of 1 percent on the retail purchase of tangible personal property does not, when applied to the sale of intoxicating liquor, enter into the field of taxation preempted by the state commensurate with its exclusive power to [illegible] license fees or occupation taxes thereon, and hence does not violate Art XX, Sec 22. Ainsworth v. Bryant (1949) 34 C2d 465, 211 P2d 561.

Subventions of liquor license fees received by counties and cities must be deposited in local general funds and expended for local governmental purposes, the "state purpose" requirement not being applicable. Atty Gen's Op (1949) 14 p 149.

8. Closing Hours

Consumption of alcoholic beverages after the hour for lawful sale for consumption on premises is not permitted under Sec 59.6 of the Act and violates also Sec 22 of Art XX. Activities other than sale or consumption of alcoholic beverages are not affected. Atty Gen's Op No. XX-[illegible], Aug. 30, 1945.

Rate of Interest

An earlier section of this number was also adopted in 1932. See above.

SEC. 22. The rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgment rendered in any court of the State, shall be 7 per cent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding 10 per cent per annum.

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 per cent per annum upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any building and loan association as defined in and which is operated under that certain act known as the "Building and Loan Association Act" approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining industrial loan companies, providing for the incorporation, powers and supervision," approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed

I

RESPONDENTS INTRODUCTORY STATEMENT
(continued)

SHOULD THE SECTION 107,(DETERMINATION OF THE ANNUAL PERCENTAGE) SECTION 107 (a) OF THE ACT which provides:

> "(a) The annual percentage rate applicable to any extension of consumer credit shall be determined in accordance with the regulations of the Board----"

Be ignored?

AND IF THE BOARD HAS ELECTED, IN ORDER TO PREVENT CIRCUMVASION, OR EVASION OF THE ACT, TO ELIMINATE THE WORD "NOMINAL" FROM EVERY PROVISION OF THE SECTIONS 226.7 OF Z, including the provisions 226.7 (b) (6) and Section 226.7 (b) (8) OF Z, AS WELL AS THE SECTIONS 226.5 (a): 226.5 (a) (I) AND SECTION 226.5 (a) (I) (i) OF Z:

SHALL SUCH ELIMINATION OF SUCH WORD "NOMINAL" BY THE BOARD BE OVERLOOKED BY THIS COURT, WHEN SAID REGULATIONS MADE UNDER AUTHORITY OF LAW, SEC.105 OF THE ACT, (SECTION 1604, U.S.C.15),

ESPESCIALLY WHEN THE WORD :"NOMINAL" IS EMPLOYED IN THE SECTION 226.5 (b) OF Z, BY THE BOARD, WHICH SECTION 226.5 (b), DEALS SOLELY WITH CREDIT OTHER THAN OPEN END.

Referring to the second contention set forth in Respondents Brief Opposing the application for Certiorari, Page 2, second paragraph is stated:

> " In addition the Petition fails to meet the standards set forth in Supreme Court Rule 19----------".

Petitioner has at all times, both in the lower Courts, and before the Supreme Court of the United States, admitted the legality of the PREVIOUS DOCTRINE of Billing Consumers, in the matter of OPEN END CREDIT.

IT IS THE INTERPRETATION given such PREVIOUS BALANCE DOCTRINE, by Respondent and by the United States District Court; and by the NINTH Circuit Court of Appeals which is not only causing the disclosure of Finance Charges and Disclosure of the Annual Percentage Rate, to be contrary to the Spirit, the Intention, and THE WORDING OF THE TRUTH IN LENDING ACT, AND Z, BECAUSE THE ACT AND REGULATION HAVE NOT BEEN CONSIDERED TOGETHER AS A WHOLE.

This interpretation, (believed by Petitioner to be erronious and contrary to Law,) is causing Petitioner to be forced to pay Finance Charges ON NON-EXISTANT CREDIT--AND TO TWICE PAY CHARGES FOR THE FINANCING OF SAME, FOR THE IDENTICAL SAME PERIOD OF EXISTING CREDIT THO THE DISCLOSURES RECEIVED BY PETITIONER . DO NOT, BY THEMSELVES DISCLOSE THIS FACT.

THESE UNDERSTATED FINANCE CHARGES ARE THEN USED AS A BASE FOR THE COMPUTATION OF THE ANNUAL PERCENTAGE RATE, CONTRARY TO LAW.

CLEAR EXPLANATION OF THESE FACTS FOLLOW:

F COUSE THERE ARE NO FORMER DECISIONS IN ANY COURT OF AMERICA, STATE OR FEDERAL, DEALING WITH THE QUESTIONS RAISED BY PETITIONER IN HIS PETITION FOR CERTIORARI, Page 2 (QUESTIONS PRESENTED).

THE QUESTION OF THE INTERPRETATION OF THE SECTIONS RELATING TO DISCLOSURE OF BOTH THE FINANCE CHARGES AND THE ANNUAL PERCENTAGE RATE, IN BOTH THE ACT AND Z, UNDER THE PREVIOUS BALANCE DOCTRINE, UPON OPEN END CREDIT ARE NOVEL.

IF PETITIONERS CONTENTIONS ARE CORRECT, AS ARE HEREINAFTER CLEARLY SET FORTH, THEN IT MIGHT APPEAR THAT SUCH CONTENTIONS, RELATING TO DISCLOSURES DEMANDED, UNDER SUCH PREVIOUS BALANCE DOCTRINE, UPON OPEN END CREDIT, MAY WELL BE WORTHY OF THE ATTENTION OF THIS UNITED STATES SUPREME COURT-ESPECIALLY IF THE INTERPRETATION, EMPLOYED BY RESPONDENT IN THE MATTER OF SUCH DISCLOSURES, IS CONTRAY TO LAW AND REGULATION HAVING THE FORCE AND EFFECT OF LAW.

PETITIONER BELIEVES THAT THE QUESTIONS RAISED IN HIS PETITION DO MEET THE STANDARD OF RULE 19 OF THE SUPREME COURT.

ARGUMENT

On Page AP-10 of the Appendix to the application for the writ of Certiorari, the NINTH CIRCUIT COURT OF APPEALS HAS SET FORTH ITS INTERPRETATION OF THE PREVIOUS MONTHS BILLING DOCTRINE, as follow:

> " Assume a charge account to have been opened June 1 with purchases of $50 on June 1 and $ 50 on June 15.
> "Assume no payments were made during June. As of June 30, the balance due would be $100. In the subsequent month that balance is referred to as the PREVIOUS BALANCE----------
> "assume that the stores finance charge is computed at 1½% per month (which is the rate actually employed by Macy in the instant case.)"----------.

The attached chart will prove clearly that the Finance Charge, assessed petitioner, under the above HYPOTHETICAL OF THE PREVIOUS BILLING DOCTRINE WAS NOT 1½% PER MONTH BUT IN FACT EXCEEDED SUCH 1½% PER MONTH, DISCLOSURE OF THE FINANCE CHARGE, AND IN FACT WAS 3% PER MONTH WHEN A FINANCE CHARGE OF 1½% FOR A FULL MONTH WAS ASSESSED UPON A BALANCE OFTHE $50.00 PURCHASE MADE ON JUNE 15, FOR THE PERIOD JUNE 15 TO JUNE 30, (CLOSE OF THE CYCLE), AT RATE OF 1½%. (SUCH PERIOD IS FOR ONE HALF MONTH ONLY. (AS TO SUCH $50.00 PURCHASED JUNE 15.)

THEREFORE, UNDER THE HYPOTHETICAL, THE FINANCE CHARGE HAVING BEEN UNDERSTATED, THE ANNUAL PERCENTAGE RATE MAY NOT BE COMPUTED NOR DISCLOSED WHEN BASED UPON THE DISCLOSED RATE OF FINANCE CHARGE, RATHER THAN THE TRUE RATE ASSESSED. Section 226.5 (a) (1) (i) Z.

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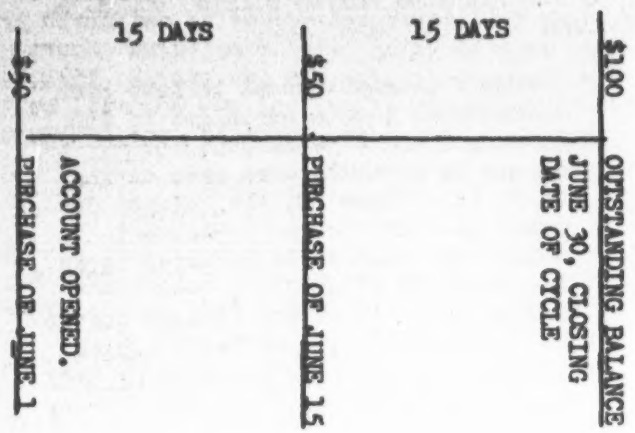
ARGUMENT

(continued)



THE ABOVE CHART ASSUMES NO PRIOR PREVIOUS BALANCE.

IT FURTHER ASSUMES NO PAYMENTS WERE MADE IN THE MONTH OF JUNE. (NOR PURCHASES).

IT FURTHER ASSUMES THAT IN THE SUBSEQUENT MONTH, THE SUM OF $100 BECOMES THE PREVIOUS BALANCE, UPON WHICH THE ASSESSMENT OF 1½% PER MONTH UPON THE AMOUNT OF $100 MAY BE ASSESSED, TO WIT: FINANCE CHARGE OF $1.50

BUT IT FAILS TO RECOGNIZE THAT THE SUM OF $1.50 covers an ENTIRE MONTH (30) DAYS AND THAT EARNED FINANCE CHARGE EXISTS, AS TO THE $50 PURCHASE MADE JUNE 15, BUT FOR 15 DAYS (½ MONTH) ONLY. (WHEN THE CYCLE CLOSES ON JUNE 30, and PRCHASE MADE JUNE 15.

The disclosures made by Respondent, in this matter set forth that, unless the balance be paid in full (such balance as is set forth in the Hypothetical of the Ninth Circuit Court of Appeal, in its Opinion of June 27, 1973, in this cause-as exists on June 30) will be assessed a FINANCE CHARGE of 1½% per MONTH.

A MONTH IN THE ENGLISH LANGUAGE IS EITHER 28, 29, 30 or 31 DAYS as the case may be.

Nowhere in the Truth in Lending Act, Nor in Regulation Z is there any authourity to reduce a MONTH, to these FRACTIONS OF A MONTH THAT EXIST BETWEEN DATE OF PURCHASE AND DATE OF CLOSE OF BILLING CYCLE-WHEN SUCH PERIODS ARE LESS THAN A MONTH, AS APPEARS IN THE HYPOTHETICAL, HERETOFORE SET FORTH, AS TO THE $50.00 PURCHASE made JUNE 15, whereafter the cycle closed on June 30.

In fact the Section 102 of The Truth in Lending Act (Section 1601 U.S.C. TITLE 15) demands that;

> "It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily, the various terms available to him, and avoid the uniformed use of credit."

NOTE THE FOLLOWING WEIRDNESS OF THE APPLICATION OF THE ACT AND Z, IF THE INTERPRETATION GIVEN TO THE PREVIOUS BALANCE DOCTRINE GO UNCHALLEGED.

ARGUMENT
(continued)

In the hypothetical, set forth in the Opinion of the Ninth Circuit, we find that a FINANCE CHARGE of $1.50 cents is authorized by the Law and Regulation, upon a balance of $100.00 existing on June 30, when an account is opened June 1st, with a purchase of fifty dollars, and additional purchase of $50.00, is MADE ON JUNE 15, WHERE THE CYCLE CLOSES ON JUNE 30, IF the Finance Charge is assessed at the rate of 1½% per MONTH upon the outdtanding balance at close of the billing cycle, to wit June 30.

THE AMOUNT OF FINANCE CHARGE ASSESSED ON THE SUBSEQUENT MONTH CLOSING CYCLE FOR THE PREVIOUS MONTH BALANCE OF $100.00 THEN RAISES THE FOLLOWING QUESTIONS, IF ASSESSED AT 1½% UPON THE TOTAL $100.00 PREVIOUS BALANCE:

FIRST: EXISTING CREDIT UPON WHICH FINANCE CHARGES WERE EARNED ON THE JUNE 15th PURCHASE OF $50.00, IF ASSESSED AT RATE OF 1½% PER MONTH would EQUAL $0.75 Cents.
For credit in amount of $50.00 extended from June 1, to June 30, a full month,(THE PREVIOUS MONTH BALANCE), ON SUBSEQUENT BILLING CYCLE.

—

Second: But what as to the charge of $0.75 cents, upon the credit existant from June 15 to June 30 Only? This is a period of but one half month only--the earned finance charge, if assessed at the Rate of 1½% Per MONTH equals but $0.37½Cents. NOT $0.75 Cents, As assessed.
TOTAL EARNED FINANCE CHARGE, TO 6-30-$1.12½¢.

We therefore arrive at the following weird facts

A) Either the Act and Regulation permits disclosure of a Finance Charge upon non-existant credit, to wit: that period between June 1 and June 15th, when the credit for the second period did not exist AND THEREFORE COULD NOT HAVE BEEN EARNED, (as to the June 15 Purchase): (on June 30)

or

B) The Act and Regulation permits disclosure and assessment of Finance Charge that is yet to be EARNED, to wit that remaining period of the MONTH between June 30, to July 15, In order to complete a full month of Earned Finance Charge, from date of Purchase, to wit 6-15. in order to conform to disclosures under the Act and Regulation, of 1½% PER MONTH.

When it be noticed that under the INTERPRETATION given by Respondent, and the Courts below, that the disclosure of Finance Charges at Rate of 1½% MONTHLY MAY BE MADE ON THE PREVIOUS BALANCE, results in the consumer having to pay twice, 1½% PER MONTH upon the period June 30 to July 15 even though he has been assessed in full to date of June 30, upon a balance of $100.00 at the maximum rate of 1½% PER MONTH-still on July 1, under the above INTERPRETATION OF THE ACT, THE CONSUMER IS TWICE ASSESSED, UPON THE SAME BALANCE, FOR A PORTION OF THE IDENTICAL PERIOD FORMERLY ASSESSED TO WIT; JUNE 30 to July 15, IF CHARGED FOR A FULL MONTH CREDIT ON JUNE 30, WHEN CREDIT EXISTED BUT FOR 15 DAYS, AS TO THE PURCHASE MADE JUNE 15, YOUR PETITIONER CLAIMS THE DISCLOSURES ARE NOT MEANINGFUL. THE DISCLOSURES DEPRIVE OF DUE PROCESS.

SUMMARY OF ARGUMENT

RESPONDENTS CONTENTIONS AS SET FORTH IN THE BRIEF OPPOSING THE WRIT-APPEAR TO BE:

1) That the Act and Regulation Z, authorize the use of a shorter MONTH, than is normally understood in the English Language: to wit: That fraction of a Month, existing between the date of purchase, when credit becomes established, and the CLOSING DATE of the billing cycle; even tho such period is LESS THAN A MONTH, FINANCE CHARGES AT THE MAXIMUM RATE OF 1½% ARE ASSESSED, FOR A FULL MONTH, (WITHOUT PROPER DISCLOSURES.)

2) NEITHER THE ACT NOR THE REGULATION PROVIDE FOR ASSESSMENT OF A FULL MONTHS FINANCE CHARGE, WHEN THE EXISTANT CREDIT EXISTED BUT FOR A FRACTION OF A MONTH. (UNLESS DISCLOSED PROPERLY).

3) THE DISCLOSURE THAT, UNLESS THE BALANCE BE PAID IN FULL BEFORE THE CLOSE OF THE SUBSEQUENT CYCLE, TO AVOID ADDITIONAL FINANCE DOES NOT ALTER THE FACT THAT AN ASSESMENT OF ONE AND ONE HALF PER CENT, UPON ANY PART OF THE BALANCE EXISTING ON THE CLOSING DATE OF THE FIRST BILLING CYCLE, BECOMES THE "PREVIOUS BALANCE" ON THE SUBSEQUENT CYCLE AND IS ASSESSED FOR A FULL MONTH AT RATE OF 1½% ON THE TOTAL BALANCE--A PART OF WHICH MAY COVER AS LITTLE AS TWO DAYS EXISTANT CREDIT--IF PURCHASES BE MADE BUT TWO DAYS BEFORE THE CLOSE OF THE ASSESSMENT UPON THE "PREVIOUS BALANCE".

4) AS A CONSEQUENCE, THE DISCLOSERS INTRODUCED INTO EVIDENCE IN THIS CASE DO NOT CORRESPOND TO LAW AND REGULATION, ON GROUNDS THAT SUCH DISCLOSURES ARE NOT MEANINGFUL. SUCH DO NOT TRUTHFULLY DISCLOSE THE COST OF CREDIT TO PETITIONER.

(5)
RESPONDENT CONTENDS THAT HE NEED MAKE ONLY A NOMINAL DISCLOSURE OF HIS FINANCE CHARGE.

(6) RESPONDENT FURTHER CONTENDS THAT HE IS ENTITLED TO A GREATER YIELD THAN HE DISCLOSES AS THE COST OF CREDIT.

NEITHER THE ACT, NOR REGULATION APPEAR TO SUPPORT RESPNDENTS ASSUMPTIONS, AS ABOVE.

THE COST OF CREDIT TO THE CONSUMER IS IDENTICAL TO THE YIELD RESPONDENT CHARGES FOR SUCH CREDIT.

IF THE AFOREGING CONTENTIONS OF RESPONDENT BE MAINTAINED THEN HE MAY DISCLOSE A FINANCE CHARGE OF BUT 1½% PER MONTH AND ACTUALLY ASSESS A FINANCE CHARGE OF 10% PER MONTH OR MORE, UPHIS THEORY THAT ALL HE HAS TO DO IS TO MAKE A NOMINAL disclosure OF THE FINANCE CHARGE.

AND THEREAFTER

RESPONDENT MAY EMPLOY THE UNDERDISCLOSED FINANCE CHARGE FOR THE COMPUTATION AND DISCLOSURE OF THE ANNUAL PERCENTAGE RATE, AS;

1½ X 12 = 18% PER ANNUM

WHEN THE ANNUAL PERCENTAGE RATE, UNDER ABOVE CIRCUMSTANCES SHOULD BE DISCLOSED AS 120% PER ANNUM. (IF ASSESSED AT 10% PER MONTH,)
SURELY SUCH IS NOT AUTHORIZED BY LAW.

CONGRESS, IN ITS WISDOM, HAS DEMANDED THE DISCLOSURE OF THE ANNUAL PERCENTAGE RATE, IN ADDITION TO THE DISCLOSURE OF THE FINANCE CHARGE ASSESSED UPON OPEN END CREDIT.

THIS DEMAND IS UNIQUE. IT APPEARS IN NO STATE LAW, NOR CONSTITUTION OF THE STATE.

PERHAPS THE REQUIREMENT THAT THE ANNUAL PERCENTAGE RATE BE DETERMINED, UNDER AN OPEN END CREDIT PLAN, IN ACCORDANCE WITH THE REGULATIONS MADE BY THE BOARD:

> SECTION 107 (a), TRUTH IN LENDING ACT,
> SECTION 1606, Title 15, U.S.C.

IS TO PREVENT JUST SUCH A CIRCUMVATION OF THE ACT AS IS HEREIN PRESENTED.

RESPONDENT, IN HIS OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI, IS ASKING THIS COURT TO CONFIRM FORM OVER SUBSTANCE.

IN THE CASE, OF THE STATE VS. PENNYS, NO. 123; August Term, 1970, IN THE STATE OF WISCONSIN Vs PENNYS, FILED OCTOBER 9th, 1970, The COURT STATES (REFERRING TO TREMPEALEAU COUNTY V.VS STATE-1952, 260 Wis 602, 605; 51 N.W. 2nd, 499); States:

> "As the Nebraska Court stated in Lloyd vs. Gutgsell, (1963) 175 NEB, 775,782,783, N.W. 2nd 124 (198): When we look to the form, can we come to any other conclusion but the one that the difference between the price and what the buyer finally pays is the cost of carrying the balance of the cash price? (Continued next page.)

The Opinion of the Nebraska Court continues:

> "To put it another way, the charge is for the forebearance to collect the full cash price, or for the use of the money."

The State of Wisconsin Case # 173, Wisconsin versus Pennys then continues:

> " Clearly then if thereis substance in forebearance, the <u>form</u> of forbearance will not prevent the application of the statute.--------"
>
> " In cases of alleged USURY, this Court will look beyond the <u>form</u> of the agreement to the <u>substance</u>."
> Leo V Peckham (1863) 17 Wisc. 394, (*383), 398 (*386)."

Respectfully submitted

Earl W. Taylor

Earl W. Taylor, Pro. Per.
Petitioner.
207 Gough Street
San Francisco, Ca 94102
Phone (415-863-8063

Dated November 24th, 1973

State of California)
County of San Francisco) SS

I, GEORGE MARKOULAKIS, first being duly sworn, do hereby state under the penalties of perjury:

That I am a citizen of the United Staes and a resident of the county of San Mateo, State of California: that my business address is 61 Gough Street, San Francisco, California: that I am over the age of 18 years: that I am not a party to this action or proceeding.

That on November 24, 1973, i caused 3 copies of the attached Motion and Brief-with exhibits, on the part of Petitioner, to be served upon opposing Counsel, below described, by placing in the United States Post Office, at 7th and Mission Streets, at San Francisco, California, a sealed envelope, addressed to the below, with postage fully prepaid thereon, to each named:

DON T. HIBNER, JR.
SHEPPARD, MULLIN,
RICHTER & HAMPTON,
458 South Spring Street
Los Angeles, Calif. 90013.

and Mr EMERNEY AND
JACOBS,
500 SANSOME ST.
SAN FRANCISCO,
CALIF. 94111

George Markoulakis

November 24, 1973

State of California)
County of San Francisco) SS

Subscribed and sworn to before me this 24th day of November, 1973.

SAM PAYTON NOTARY PUBLIC

My Commission expires

OFFICIAL SEAL
SAM PAYTON
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Commission Expires Dec 16, 1974

The Regulations with which we are herewith concerned have been issued pursuant Section 105 of the Truth in Lending Act, (Sec. 1604, U.S.C. 15), which relate to the Disclosure of the Annual Percentage Rate upon Open End Credit, and the method of cumputing such Annual Percentage Rate, are set forth in 12 C. F. R. 226.5 (a) & (a) (1). and Sect. 226.5 (a) (1) (i).
Sections 226.7 of Z; Sections 226.7.(b) (6) of Z; and Section 226.7 (b) (8) of Z, control in the above matter. AND NOWHERE IN THESE SECTIONS IS THE WORD NOMINAL TO BE FOUND.

In the matter and manner of the computation of the Annual Percentage Rate, the Sections 226.5 a, of Z; the Section 226.5 (1) of "Z"; the Section 226.5 (a) (1) (i) of Z; these sections take over. NOWHERE IN THESE SECTIONS OR ANY OF THEM DOES THE WORD NOMINAL APPEAR.

TO SUCH EXTENT THE REGULATIONS, CITED ABOVE, DIFFER FROM THE SECTION 127 OF THE ACT, AND SUCH DIFFERENCE IS AUTHORIZED, SECTION 105 OF THE ACT (SECTION 1604 et seq. Title 15 U.S.C.)

AND IT SHOULD BE NOTICED BY THE COURT THAT THE REGULATION Z, SECTION 226.5 (b), et seq. DOES EMPLOY THE WORD NOMINAL BUT SUCH SEC. 226.5 (b), RELATES SOLELY TO CREDIT OTHER THAN OPEN END.

It is also herewith pointed out that no Section of the Truth in Lending Act, Nor of Regulation Z, authorize or mandate the disclosure of a NOMINAL FINACE CHARGE TO BE EMPLOYED TO SATISFY THE PROVISIONS OF Z Section 226.5 (a); Section 226.5 (a) (1); nor Section 226.5 (a) (1) (i); IN THE MATTER OR MANNER OF COMPUTATION AND DISCLOSURE OF THE ANNUAL PERCENTAGE RATE.

Under Art XX, Sec 22, the Legislature has no power to delegate local option to counties and municipalities. Atty Gen's Letter to City Prosecuting Attorney, Long Beach, Nov. 24, 1933, L.B. 129, p 118a.

There is no precise, lasting and inflexible definition of a municipal affair; and, while the licensing of a liquor business was a municipal affair prior to Sec 22 of Art XX, the adoption of said amendment changed the power to impose a license tax for revenue upon those engaged in the liquor business from a municipal affair to one of general state-wide concern and, therefore, removed such power from the protection of Sec 6 of Art XI. L. A. Brewing Co. v. Los Angeles (1935) 8 CA2d 391, 48 P2d 71.

Art XX, Sec 22, reserving to the State the exclusive power to license and regulate the manufacture, sale, etc., of intoxicating liquor within the State, being special in nature and adopted subsequent to Art XI, Sec 6, permitting chartered municipalities to reserve to themselves control of their municipal affairs subject only to express prohibition or limitation, controls in the express field that it covers, but its effect on the plenary power of taxation possessed by a chartered municipality should not be extended beyond the express terms of the constitutional reservation on the [illegible] of intoxicating liquors. Ainsworth v. Bryant (1949) 34 C2d 465, 211 P2d 561.

An ordinance of the City and County of San Francisco imposing a license tax of one-half of 1 percent on the retail purchase of tangible personal property does not, when applied to the sale of intoxicating liquor, enter into the field of taxation preempted by the State commensurate with its exclusive power to levy license fees or occupation taxes thereon, and hence does not violate Art XX, Sec 22. Ainsworth v. Bryant (1949) 34 C2d 465, 211 P2d 561.

Subventions of liquor license fees received by counties and cities must be deposited in local general funds and expended for local governmental purposes, the "state purpose" requirement not being applicable. Atty Gen's Op (1949) 14 p 149.

8. Closing Hours

Consumption of alcoholic beverages after the hour for lawful sale for consumption on premises is not permitted under Sec 59.6 of the Act and violates also Sec 22 of Art XX. Activities other than sale or consumption of alcoholic beverages are not affected. Atty Gen's Op No. NS 3[illegible] Aug. 30, 1945.

Rate of Interest

An earlier section of this number was also adopted in 1932. See above.

SEC. 22. The rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgment rendered in any court of the State, shall be 7 per cent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding 10 per cent per annum.

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 per cent per annum upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any building and loan association as defined in and which is operated under that certain act known as the "Building and Loan Association Act" approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining industrial loan companies, providing for their incorporation, powers and supervision," approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed

EXHIBIT 8
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and operating under that certain act entitled "An act defining credit unions, providing for their incorporation, powers, management and supervision," approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any bank as defined in and operating under that certain act known as the "Bank Act," approved March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 4 of Division 6 of the Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry and bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923," as amended in loaning or advancing credit so secured, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. New section adopted November 6, 1934]

COLLATERAL REFERENCES

Cal Jur Interest § 7; McK Dig Interest §§ 9–16; Am Jur Interest § 37.

Notes: 37 ALR 447, 55 ALR 950, 112 ALR 833, 156 ALR 936 (rate of interest chargeable against guardians, executors, or administrators and trustees); 147 ALR 1023 (constitutionality, construction, and application of statutes regarding rate of interest during "emergency").

NOTES OF DECISIONS

1. Amendment Fixed Maximum Interest Rate
2. Interest on Judgments
3. Effect of Amendment on Usury Law
4. The Penalty of Recovery of Treble Usurious Interest Under Usury Law

1. Amendment Fixed Maximum Interest Rate

The effect of the 1934 amendment to Art XX, Sec 22, upon the Usury Law was to reduce the maximum permissible interest rate from 12 percent to 10 percent, but not to otherwise affect its requirements as to those classes of lenders which were specifically exempted from that regulation; and as to the exempted groups, the Legislature was reinvested with the same control over them as it had prior to enactment of the Usury Law. In re Fuller (1940) 15 C2d 425, 102 P2d 321; French v. Mortgage Guarantee Co. (1940) 16 C2d 26, 104 P2d 635

Whether a transaction is usurious

ANTI-USURY WOODCUT FROM 1850

LENDING

Useless Usury Laws

With usura hath no man a house of good stone.
—Ezra Pound, *Canto XLV*

That line strikes a deep chord of almost mystical belief that is still embodied in today's anti-usury laws, which set ceilings on interest rates. All 50 U.S. states have some form of these laws. In an era when the Government counts on rising interest rates to cool an inflationary economy, they are bothersome anachronisms—or would be, if they were effective. In fact, most are so riddled with exceptions that they apply mostly to mortgage loans. In that field, though, they are causing enough trouble to indicate that Pound's line would be more accurate if it read: "*Without* usura hath no man a house . . ."

The problem is that in such states as New York, New Jersey and Minnesota, usury laws limit mortgage-loan interest to about 8%. Bankers complain that in today's market, this is so unprofitable that it discourages them from making loans to finance the buying of houses. "If bankers are paying out 10½% to 11% to get short-term money, and the prime rate is 9¾%, then they cannot lend at 8%," says Robert Greenberg, of the state real estate board in New York.

In several states, lenders are lobbying to raise the usury ceilings. They face strong opposition from critics who point out that mortgage lending has been running at a faster pace than a year ago (though it has begun to come down in the past month or so). In New Jersey, AFL-CIO officials want a rollback of permissible interest to 6%, contending this would enable people of modest incomes to afford housing. Oliver Jones, executive vice president of the Mortgage Bankers Association, calls such attitudes "medieval."

In fact, the beliefs enshrined in the usury laws are much older than medieval. For many centuries, the term usury referred to the taking of any interest at all. The *Book of Deuteronomy* strongly prohibits collecting interest. The reason: lending to a brother in need is a duty required by love, not to be corrupted by the profits of interest. In ancient Greece, Aristotle condemned interest as "most unnatural," and early Christians deemed it sinful. Because Christians could not make interest-bearing loans in medieval Europe, borrowers turned largely to Jews. Only in the 16th century, after the Reformation and John Calvin's defense of interest under certain conditions, did lawmakers begin redefining usury as the collecting of "excessive" interest. In England, Henry VIII set an interest ceiling of 10%, which some U.S. mortgage lenders would like to see put into effect now.

Today, outside the mortgage field, U.S. usury laws are full of holes; business loans, car loans and charge accounts are almost always exempted. As borrowers have been discovering since the federal Truth in Lending law took effect in 1969, they pay as much as 20% on loans from finance companies and even 36% annual interest on mail-order loans. So long as such rates are permitted, usury laws are useless and should be scrapped.

EXHIBIT B
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Section 163.—Interest

26 CFR 1.163–1: Interest deduction in general.

Amounts levied by retail stores on customers' revolving charge accounts that are designated as "finance charges" pursuant to the Truth in Lending Act are deductible as interest under section 163(a) of the Code; Revenue Ruling 67–62 revoked and Revenue Ruling 71–98 modified.

Rev. Rul. 72–315

Advise has been requested whether, under the circumstances described below, amounts designated as "finance charges" levied on customer charge accounts by a retail store are deductible as interest under section 163(a) of the Internal Revenue Code of 1954.

A retail store maintains what it calls "revolving charge accounts" for its customers with approved credit. These customers may charge their purchases and then either pay for them in full or in installments. If the customer pays for his purchases within 30 days from the date of the statement billing date, no charge is made to his account by the store. In the event that full payment is not made within 30 days, a charge is made to the customer's account based on his unpaid balance at the beginning of the month. The charge made to these accounts is stated as a "finance charge" and expressed as an annual percentage rate on the customer's billing statement in accordance with the Consumer Credit Protection Act, P.L. 90–321; 82 Stat. 146, et seq. (Truth in Lending Act).

Section 163(a) of the Code, and the regulations thereunder provide that all interest paid or accrued within the taxable year on indebtedness shall be allowed as a deduction in computing taxable income.

Section 163(b) of the Code provides, in part, that if personal property is purchased under a contract which provides that payment of part or all of the purchase price is to be made in installments, and the carrying charges are separately stated but the interest charge cannot be ascertained, then the payments made during the taxable year under the contract shall be treated as if they included interest equal to the lesser of six percent of the average unpaid monthly balance or the actual charges for the year.

If the interest charge is separately stated or can be ascertained, section 163(b) of the Code does not apply.

For income tax purposes, interest has been defined by the Supreme Court of the United States as the amount one has contracted to pay for the use of borrowed money, and as compensation paid for the use or forbearance of

money. See *Old Colony Railroad Co.* v. *Commissioner*, 284 U.S. 552 (1932), Ct. D. 456, C.B. XI–1, 274 (1932) and *Pearl E. Deputy, Administratrix, et al.* v. *du Pont*, 308 U.S. 488 (1940), Ct. D. 1435, C.B. 1940–1, 118.

A charge which is not paid for the use or forbearance of money, but is paid to compensate the lender for the cost of specific services performed in connection with the borrower's account does not qualify as interest, but is a "service charge". See Revenue Ruling 69–189, C.B. 1969–1, 55, holding that the portion of the maximum loan charge allowed under Chapter 1321 of the Ohio Revised Code that can be established as paid by the borrower for the use or forbearance of money and that is not attributable to specific services performed in connection with the borrower's account, is deductible as interest under section 163(a) of the Code.

However, it is not necessary for the parties to a transaction to label a payment made for the use of money as interest for it to be so treated. The facts of the transaction control its character; not the terminology. See Revenue Ruling 69–188, C.B. 1969–1, 54, which holds that a "loan processing fee" paid by a mortgagor-borrower as compensation to a lender solely for the use or forbearance of money is considered to be interest.

One of the factors distinguishing a "service charge" from interest is that a "service charge" is a fixed charge having no relationship to the amount borrowed or the time given to pay whereas interest is based on the amount deferred and the time of deferral. Compare *Noteman et al.* v. *Welch*, 108 F. 2d 206 and *Workingmen's Loan Assn.* v. *United States*, 142 F. 2d 359.

In the instant case, the "finance charge" is levied by the retail store only in the event the customer does not pay his full balance within 30 days. Further, the charge is not a fixed fee but is based on the customer's unpaid balance and computed monthly.

Accordingly, it is held that the amount charged to the customer's "revolving charge account" is solely for the privilege of deferring payment and is interest. Since the interest charge is ascertainable, section 163(b) does not apply and the total charge is deductible under section 163(a) of the Code.

Revenue Ruling 67–62, C.B. 1967–1, 44, which relates to the deductibility as interest of service charges paid by customers of a department store and holds that the formula provided by section 163(b) of the Code applies with respect to service charges levied on budget charge accounts is revoked.

Revenue Ruling 71–98, C.B. 1971–1, 57, is modified to hold that, even if the fee charged by the bank to the retailer did not cover all of the bank's credit card plan expenses, the amount paid by the customer is still ascertainable as interest and deductible under section 163(a) of the Code.

IN AN OPINION, RECEIVED FROM THE LEGISLATIVE COUNSEL FOR THE STATE OF CALIFORNIA, DATED JANUARY 14, 1972 AND NUMBERED # 383, AND SIGNED BY BRIAN L. WALKUP, ASST. LEGISLATIVE COUNSEL FOR THE STATE OF CALIFORNIA, FOR GEORGE R. MURPHY, LEGISLATIVE COUNSEL FOR THE STATE OF CALIFORNIA, IS SET FORTH, ON PAGE 3--BOTTOM PARAGRAPH OF SUCH OPINION:

"However assuming that a seller or holder of a retail installment account does not fall within one of the exempted classes of exempted lenders under Sec. 22 the question becomes one of whether the maximum Finance Charges, permitted under Section 1810.2, (as amended 1969--Calif. Civil Code) constitute INTEREST under Sec. 22 (of the California Constitution) (Article XX, thereof).

" IF SUCH CHARGES ARE INTEREST, THEN THE LIMITS IMPOSED UPON THEM, (by Section 1810.2 of the California Civil Code) ARE IN EXCESS OF AND IN VIOLATION OF THE 10% LIMITATION SET BY ARTICLE XX, 22, (of the California Constitution)."

All words in parentasis above, are petitioners. All other words, not in parenthesis, are those of the Legislative Counsel of the State of California.

Obviously, the DISCLOSURE of petitioners ANNUAL PERCENTAGE RATE upon his open end credit account with respondent deprive Petitioner to his Civil Right guaranteed him under the California Constitution, ARTICLE XX, Sub 22,(USURY) UNDER THE PREVIOUS BALANCE DOCTRINE, AS INTERPRETED BY RESPONDENT.